UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,400	06/09/2005	Clyde James Barnes	PPD 50679	5701

26748 7590 01/07/2010

SYNGENTA CROP PROTECTION , INC.
PATENT AND TRADEMARK DEPARTMENT
410 SWING ROAD
GREENSBORO, NC 27409

EXAMINER	
ARNOLD, ERNST V	

ART UNIT	PAPER NUMBER
1616	

NOTIFICATION DATE	DELIVERY MODE
01/07/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

department-gso.patent@syngenta.com

Office Action Summary	Application No.	Applicant(s)	
	10/509,400	BARNES ET AL.	
	Examiner	Art Unit	
	ERNST V. ARNOLD	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 September 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 2 and 23 have been cancelled. Claims 1 and 3-22 are pending and under examination.

Withdrawn rejections:

Applicant's amendments and arguments filed 9/3/09 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed below is herein withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 3-22 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Moreno et al. (US 5,324,708) in view of Wikeley (US 6,107,249) and

Nielsen et al. (US 5078782 hereinafter '782) and with respect to claim 21 Nielson et al. (US 5,795,847 hereinafter '847).

Applicant claims an aqueous glyphosate concentrate composition comprising glyphosate and a poly(alkylene oxide) alkanol and a method of reducing the foaming of a glyphosate concentrate composition.

Determination of the scope and content of the prior art

(MPEP 2141.01)

Moreno et al. clearly disclose a composition comprising glyphosate isopropylammonium salt and isotridecyl alcohol polyglycol ether which would be a low foaming herbicidal composition:

EXAMPLE II.37

Solid glyphosate mono-ipa-salt	68.00%
Ethoxylated-nonyl-phenol	2.00%
Ethoxylated-alkylamine	4.50%
Ethoxylated fatty amine	9.60%
Isotridecyl alcohol-polyglycolether	7.30%
KCl	3.45%
1-naphthyl acetic acid	0.05%
Boric acid	0.10%

Applicant discloses that isotridecyl alcohol polyglycol ether is Genapol X080 having n = 8 and represents a compound of the instant formula I in instant claim 1 (Page 9, lines 6-7).

Moreno et al. clearly establish the concept of having a composition of glyphosate with the instantly claimed ethoxlylated fatty alcohol.

Ethoxylated nonyl phenol is an additional anti-foam and that ethoxylated fatty amine is an additional bioperformance enhancing agent. Moreno et al. disclose compositions with 0.1 to 99.9 percent of the actives (column 7, lines 23-25). Moreno et al. disclose a method of killing unwanted plants by diluting the composition with water and applying it to plants (claims 7-12). Moreno et al. disclose adding ammonium sulphate to the composition (column 8, lines 47-51). Moreno et al. disclose adding alkylpolyglycosides to the composition (column 8, line 30). Moreno et al. teach in column 23, lines 52-68;

III.3. SOLUBILITY TESTS

III.31

Table IV illustrates some solubility values of the mono-isopropylammonium salts and di-isopropylammonium salts of N-(phosphonomethyl)-glycine on the basis of which the processes according to our invention can be reduced to practice. All solvents or solvent-mixtures can be used for our processes which show a reasonable solubility—difference between the salts and products that have to be separated.

TABLE IV

	SOLUBILITY g/liter		
solvent	mono-IPA* salt	di-IPA* salt	glyphosate**
water	1470	1980	12

Clearly, Moreno et al. teach making concentrated aqueous solutions of glyphosate on the basis of which the processes according to the invention can be reduced to practice.

The Examiner knows these are concentrated solutions because the amount of glyphosate in g/l is more than the amount instantly claimed. It is therefore not a stretch of the imagination to make the compositions of Moreno et al. up to the maximum solubility of the glyphosate used which of course would be concentrated aqueous solutions.

Wikeley et al. teach low foam compositions comprising glyphosate acid or salt (ammonium or alkalie metal salt) with alkylglycoside surfactant and quaternary ammonium surfactants as well as a method to kill plants with the composition (column 5, lines 1-9; column 2, lines 6-59 and claims 1-11). Wikeley teaches glyphosate in the amount of 50 to 500 g/L (column 5, lines 10-15). The alkylglycoside is present from 20 parts by weight per 100 parts by weight glyphosate to 100 parts by weight per 100 parts by weight glyphosate (claim 9).

Nielson et al. '847 teach glyphosate and ammonium sulfate compositions comprising 5-60% ammonium sulfate by weight as well as a C_{12}-C_{15} alkylalcohal ethoxylated with 13 oxyethylene units (Genapol OX-130) and alkylglycosides (Claims 1-13; and column 10, line 23 to column 12, line 14). Nielson et al. teach that the non-ionic surfactants may be selected from among such which are ethoxylated, propoxylated or co-ethoxylated/propoxylated surfactants (column 10, line 57 through column 11, line 10).

Nielsen et al. '782 teaches a pesticidal concentrate composition with 1-55% by weight of a solid or liquid pesticidal component, which can be glyphosate, 20-90% by weight of an oily component, and 1-45% by weight of surfactants (claims 1 and 48). The

non-ionic surfactant can be ethoxylated, propoxylated and co-ethoxylated/propoxylated fatty alcohols (claim 25, 53, 54 and 58). The degree of ethoxylation can be from 3-14 oxyethylene units and the alky group for the fatty alcohol comprises from 6-20 carbon atoms (column 23, lines 4-20).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

1. Moreno et al. do not expressly teach a composition comprising 1-20 g/l of polyethoxylated alkanol; 80 to 250 g/l of the bioperformance adjuvant; 400-500 g/l to 340-380 g/l or the limitation of 240 to 550 g/l glyphosate in the method of reducing the foaming of glyphosate concentrates. Wikeley and Nielsen et al. '782 cure these deficiencies in Moreno et al. by providing basic guidelines on the amount of glyphosate; the amount of surfactant and the amount of alkylglycoside.

2. Moreno et al. do not expressly teach a composition comprising 80 to 140 g/l ammonium sulfate or non-ionic surfactants with poly(propylene oxide) or mixed poly(ethylene oxide/propylene oxide) group. This deficiency in Moreno et al. is cured by the teachings of Nielson et al. '847.

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

1. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the composition of Moreno et al. with a 1-20 g/l of polyethoxylated alkanol; 80 to 250 g/l of the bioperformance adjuvant; and 400-500 g/l

glyphosate or the narrower limitation of 340-380 g/l glyphosate or the limitation of 240 to 550 g/l glyphosate in the method of reducing the foaming of glyphosate concentrates, as suggested by Wikeley and Nielsen et al. '782, and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Moreno et al. teach broadly glyphosate solutions up to a solubility of 1980 g/l for the di-isopropyl amine salt (column 23, line 68) but not the instantly claimed amount and Wikeley cures this deficiency by providing a basic guideline of how much glyphosate in g/l should be present for one of ordinary skill in the art to follow. Nielsen et al. '782 provide guidance on the amount of surfactant to add to glyphosate concentrate solutions. To arrive at the amount of glyphosate, bioperformance adjuvant, polyethoxylated alkanol and other additives is merely routine optimization of the composition by one of ordinary skill in the art. It is the Examiner's position that mixing the solution of Moreno et al. intrinsically would reduce the foam of glyphosate.

2. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the composition of Moreno et al. with 80 to 140 g/l of ammonium sulfate or with nonionic surfactants with poly(propylene oxide) or mixed poly(ethylene oxide/propylene oxide) group as suggested by Nielson et al. and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Moreno et al. teach adding ammonium sulfate and ethoxylated fatty alcohols and Nielson et al. provide guidelines on how much to add as well as the types of ethoxylated/propoxylated fatty alcohols. It is then merely a matter of judicious selection

and routine optimization by one of ordinary skill in the art to arrive at the instantly claimed amounts in the absence of evidence to the contrary.

A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. (*In re Opprecht* 12 USPQ 2d 1235, 1236 (Fed Cir. 1989); *In re Bode* 193 USPQ 12 (CCPA) 1976).

In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Response to arguments:

Applicant asserts that Moreno et al. is directed to *solid compositions* and not the instantly claimed low-foaming *aqueous* glyphosate concentrate. Applicant then asserts that the formulation of Example II.37 is a solid concentrate and that to modify the Moreno reference in an attempt to render the current claims obvious would completely destroy the teachings and intent of Morena. Respectfully, the Examiner cannot agree. Moreno et al. clearly teach making concentrated aqueous solutions of glyphosate in their solubility tests which show 1470 g/l of the mono-IPA salt of glyphosate and 1980

g/l of the di-IPA salt of glyphosate dissolved in water and is not limited to a solid mixture. Moreno et al. clearly teach that this forms the basis of which the processes according to their invention can be reduced to practice. Moreno et al. teach the instantly components as a solid composition and it is not a stretch of logic or reason to dissolve up to the maximum amount of glyphosate, for example up to 1980 g of the di-IPA salt in 1 liter of water and have the corresponding wt% of the other ingredients to make a concentrated aqueous solution. MPEP 2141.03 states (in part), "A person of ordinary skill in the art is also a person of ordinary creativity, not an automaton." *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 167 LEd2d 705, 82 USPQ2d 1385, 1397 (2007).

Applicant asserts that the Examiner has incorrectly interpreted Table IV of Moreno et al. and that Moreno et al. is concerned with a process for making crystalline, non-hydroscopic monoammonium salts of Formula I. Respectfully, the Examiner cannot agree. Moreno et al. clearly contemplate dissolving the solid mixture in water for use as in claim 7, for example, and thus make aqueous solutions. Whether or not the solution is a concentrate or not depends on the amount of material present. Table IV provides guidance on how much of the salts can be dissolved in terms of g/liter. As stated before, it is not a stretch of the imagination to dissolve the maximum amount of the salt in water and produce an aqueous concentrate that contains the recited ingredients.

Applicant asserts that it is improper to combine references where the references teach away form their combination and that there is no suggestion or motivation to make the proposed modifications. Applicant contends that to modify Moreno et al. to

make an aqueous concentrate clearly renders Moreno unsatisfactory for its intended purpose and that Moreno et al. teach away from aqueous concentrates. Respectfully, the Examiner cannot agree. Moreno et al. is not limited to solid compositions and clearly in at least claim 7 is indication that the solid compositions are to be dissolved in water for use. It is then merely a matter of how much of the active that is dissolved in the water which would make the solution an aqueous concentrate. So, contrary to Applicant's contention that Moreno et al. is solely directed to solid compositions, the Examiner has shown that these solid compositions are meant to be dissolved in water to form aqueous solutions. Given the fact that Moreno also teaches concentrated aqueous solutions in Table IV, there is precedent established for making a concentrated aqueous solution of the combined composition.

No unexpected results have been presented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 3-22 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen et al. (US 5078782 hereinafter '782) in view of Moreno et al. (US 5,324,708) and Wikeley (US 6,107,249) and with respect to claim 21 Nielson et al. (US 5,795,847 hereinafter '847).

Applicant claims an aqueous glyphosate concentrate composition comprising glyphosate and a poly(alkylene oxide) alkanol and a method of reducing the foaming of a glyphosate concentrate composition.

Determination of the scope and content of the prior art

(MPEP 2141.01)

Nielsen et al. '782 teaches a pesticidal concentrate composition with 1-55% by weight of a solid or liquid pesticidal component, which can be glyphosate, 20-90% by weight of an oily component, and 1-45% by weight of surfactants (Abstract; and claims 1 and 48). The non-ionic surfactant can be ethoxylated, propoxylated and co-ethoxylated/propoxylated fatty alcohols (claim 25, 53, 54 and 58). The degree of ethoxylation can be from 3-14 oxyethylene units and the alky group for the fatty alcohol comprises from 6-20 carbon atoms (column 23, lines 4-20). The comprising language allows for branched fatty alcohols. Alkoxylated alkylamines are a component of the composition and reads on additional anti-foam agents (claims 53, 62 and 63). Mixing up

the solutions of Nielsen et al. '782 intrinsically reads on a method of reducing the foaming of a glyphosate concentration composition.

Moreno et al. clearly disclose a composition comprising glyphosate isopropylammonium salt and isotridecyl alcohol polyglycol ether which would be a low foaming herbicidal composition:

EXAMPLE II.37

Solid glyphosate mono-ipa-salt	68.00%
Ethoxylated-nonyl-phenol	2.00%
Ethoxylated-alkylamine	4.50%
Ethoxylated fatty amine	9.60%
Isotridecyl alcohol-polyglycolether	7.30%
KCl	3.45%
1-naphthyl acetic acid	0.05%
Boric acid	0.10%

Applicant discloses that isotridecyl alcohol polyglycol ether is Genapol X080 having n = 8 and represents a compound of the instant formula I in instant claim 1 (Page 9, lines 6-7).

Moreno et al. clearly establish the concept of having a composition of glyphosate with the instantly claimed ethoxlylated fatty alchol.

Ethoxylated nonyl phenol is an additional anti-foam and that ethoxylated fatty amine is an additional bioperformance enhancing agent. Moreno et al. disclose compositions with 0.1 to 99.9 percent of the actives (column 7, lines 23-25). Moreno et al. disclose a

method of killing unwanted plants by diluting the composition with water and applying it to plants (claims 7-12). Moreno et al. disclose adding ammonium sulphate to the composition (column 8, lines 47-51). Moreno et al. disclose adding alkylpolyglycosides to the composition (column 8, line 30). Moreno et al. teach in column 23, lines 52-68;

III.3. SOLUBILITY TESTS

III.31

Table IV illustrates some solubility values of the mono-isopropylammonium salts and di-isopropylammonium salts of N-(phosphonomethyl)-glycine on the basis of which the processes according to our invention can be reduced to practice. All solvents or solvent-mixtures can be used for our processes which show a reasonable solubility—difference between the salts and products that have to be separated.

TABLE IV

	SOLUBILITY g/liter		
solvent	mono-IPA* salt	di-IPA* salt	glyphosate**
water	1470	1980	12

Wikeley et al. teach low foam compositions comprising glyphosate acid or salt (ammonium or alkali metal salt) with alkylglycoside surfactant and quaternary ammonium surfactants as well as a method to kill plants with the composition (column 5, lines 1-9; column 2, lines 6-59 and claims 1-11). Wikeley teaches glyphosate in the amount of 50 to 500 g/L (column 5, lines 10-15). The alkylglycoside is present from 20 parts by weight per 100 parts by weight glyphosate to 100 parts by weight per 100 parts by weight glyphosate (claim 9).

Nielson et al. '847 teach glyphosate and ammonium sulfate compositions comprising 5-60% ammonium sulfate by weight as well as a C_{12}-C_{15} alkylalcohal

ethoxylated with 13 oxyethylene units (Genapol OX-130) and alkylglycosides (Claims 1-13; and column 10, line 23 to column 12, line 14). Nielson et al. teach that the non-ionic surfactants may be selected from among such which are ethoxylated, propoxylated or co-ethoxylated/propoxylated surfactants (column 10, line 57 through column 11, line 10).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

1. Nielsen et al. '782 do not expressly teach a composition comprising the exact Formula (1) of instant claim 1; 1-20 g/l of polyethoxylated alkanol; 80 to 250 g/l of the bioperformance adjuvant; 400-500 g/l to 340-380 g/l or the limitation of 240 to 550 g/l glyphosate in the method of reducing the foaming of glyphosate concentrates. Moreno et al., Wikeley, and Nielsen et al. '847 cure these deficiencies in Nielsen et al. '782 by providing the exact type of nonionic surfactant to use; the amount of surfactant and the amount of alkylglycoside.

2. Nielsen et al. '782 do not expressly teach a composition comprising 80 to 140 g/l ammonium sulfate or non-ionic surfactants with poly(propylene oxide) or mixed poly(ethylene oxide/propylene oxide) group. This deficiency in Nielsen et al. '782 is cured by the teachings of Nielson et al. '847.

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

1. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the composition of Nielsen et al. '782 with a 1-20 g/l of polyethoxylated alkanol that is instantlyc claimed; 80 to 250 g/l of the bioperformance adjuvant; and 400-500 g/l glyphosate or the narrower limitation of 340-380 g/l glyphosate or the limitation of 240 to 550 g/l glyphosate in the method of reducing the foaming of glyphosate concentrates, as suggested by Moreno et al. and Wikeley, and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Nielsen et al. '782 teach broadly glyphosate concentrate solutions with nonionic surfactants but not the instantly claimed surfactant and Moreno et al. cure this deficiency by teaching the use of the instantly claimed nonionic surfactant in glyphosate compositions. Wikeley cures this deficiency by providing a basic guideline of how much glyphosate, and which salts to select, in g/l should be present for one of ordinary skill in the art to follow. To arrive at the amount of glyphosate, bioperformance adjuvant, polyethoxylated alkanol and other additives is merely judicious selection and routine optimization of the composition by one of ordinary skill in the art. It is the Examiner's position that mixing the solution of Nielsen et al. '782 intrinsically would reduce the foam of glyphosate.

2. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the composition of Nielsen et al. '782 with 80 to 140 g/l of ammonium sulfate or with nonionic surfactants with poly(propylene oxide) or

mixed poly(ethylene oxide/propylene oxide) group as suggested by Nielson et al. '847 and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Moreno et al. teach adding ammonium sulfate and ethoxylated fatty alcohols and Nielson et al. '847 provide guidelines on how much to add as well as the types of ethoxylated/propoxylated fatty alcohols. It is then merely a matter of judicious selection and routine optimization by one of ordinary skill in the art to arrive at the instantly claimed amounts in the absence of evidence to the contrary.

A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. (*In re Opprecht* 12 USPQ 2d 1235, 1236 (Fed Cir. 1989); *In re Bode* 193 USPQ 12 (CCPA) 1976).

In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Response to arguments:

Applicant asserts that Nielsen teaches water as an optional ingredient. This is correct and when water is present the concentrate is aqueous. Nielsen teaches up to 40% water (column 8, lines 38-47). The instant claim language is open and does not exclude other ingredients. Applicant asserts that there is no evidence that foaming is reduced. The Examiner has stated that such reduced foaming is intrinsic to the composition and the U.S. Patent Office is not equipped with analytical instruments to test prior art compositions for the infinite number of ways that a subsequent applicant may present previously unmeasured characteristics.

Applicant asserts that there is no motivation to combine the references but the Examiner has shown in detail above how the cited references cure the deficiencies of the primary reference. Respectfully, the Examiner cannot agree with Applicant's arguments and the rejection is maintained.

Conclusion

No claims are allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F (6:15 am-3:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Ernst V Arnold/

Primary Examiner, Art Unit 1616